

### **REMARKS**

Claims 42–66 are pending. Applicants thank the Examiner for the courtesy of the telephonic interview conducted on June 12, 2008.

#### **Rejections for Obviousness-Type Double Patenting**

Claims 42, 50, and 57 stand rejected for obviousness-type double-patenting over the claims of U.S. Patent No. 6,737,165 (Smith I); U.S. Patent No. 6,548,612 (Smith II); U.S. Patent No. 7,160,623 (Smith III); and U.S. Patent No. 7,235,191 (Schmidt).

Each of claims 42, 50, and 57 recite in part “polyethylene”. None of the claims of the cited references recites polyethylene. Instead, the claims of Smith I, Smith II, and Smith III appear to be directed to poly(tetrafluoroethylene). Similarly, the claims of Schmidt appear to be directed to polypropylene. Because none of the claims of the cited references discloses or suggests polyethylene, claims 42, 50, and 57 are not obvious over the claims of the cited references for at least this reason.

#### **Rejections Under 35 U.S.C. § 112, Second Paragraph**

Claims 42–66 stand rejected under 35 U.S.C. § 112, second paragraph as indefinite for reciting the term “weight average molecular weight”. Applicants note that the Examiner cites  $M_w$  and  $M_n$  as “standard types” of average molecular weight values used in polymer chemistry. Applicants further note that “ $M_w$ ” is defined as “weight average molecular weight”. Accordingly, Applicants submit that the term is not indefinite and request the Examiner withdraw the rejection.

#### **Rejections Under 35 U.S.C. § 102**

Claims 42, 50, and 57 stand rejected under 35 U.S.C. §§ 102(b) or 102(e) as anticipated by Smith I, Smith II, Smith III, and Schmidt. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

As discussed above, each of claims 42, 50, and 57 recites in part “polyethylene”. None of the cited references discloses polyethylene, and in particular, polyethylene in the molecular

weight ranges recited in the claims. Accordingly, none of claims 42, 50, and 57 is anticipated by the cited references for at least this reason.

### **Rejections Under 35 U.S.C. § 103**

Claims 42–66 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Smith I, Smith II, Smith III, and Schmidt.

Obviousness is a question of law based on underlying factual inquiries set forth in *Graham v. John Deere*: (1) determining the scope and content of the prior art; (2) ascertaining the differences between the claimed invention and the prior art; and (3) resolving the level of ordinary skill in the pertinent art. Objective evidence of non-obviousness must be also considered. In assessing the differences between the claim and the cited references, every feature of the claim must be disclosed or suggested in the cited references or known to one skilled in the art in making a *prima facie* case of obviousness. A *prima facie* case of obviousness also requires a reasonable expectation of success in the modification or combination of references, which must be found in the cited references or must be known to one skilled in the art. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). “The defendants contend that the two patents in suit are invalid for obviousness based on a combination of several prior art references. In such a case, the burden falls on the patent challenger to show by clear and convincing evidence that a person of ordinary skill in the art would have had reason to attempt to make the composition or device, or carry out the claimed process, and would have had a *reasonable expectation of success* in doing so.” *Pharmastem Therapeutics v. Viacell, Inc.* 491 F.3d 1342 (Fed. Cir. 2007) (emphasis added).

Independent claims 42, 50, and 57 each recite in part “polyethylene”. None of the cited references discloses or suggests polyethylene. Accordingly, none of claims 42, 50, or 57 is obvious over the cited references, either alone or in combination. Because claims 43–49 are dependent on claim 42, and claims 51–56 and 58–66 are dependent on claim 50, and each recites additional features, none of these claims is obvious over the cited references for at least the same reason.

### **No Disclaimers or Disavowals**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicants are not conceding in this

**Application No.: 10/501,936**

Responsive to an Office Action dated March 31, 2008

application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that the Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

### **Conclusion**

Applicants submit that all of the Examiner's rejections have been addressed and overcome, and that all claims are allowable over the art of record. Applicants have submitted amendments and arguments believed to be sufficient to overcome all of the outstanding rejections. Consequently, Applicants have not advanced every argument for the allowability of the claims over the references of record. As such, Applicants do not acquiesce to any of the Examiner's statements or characterizations not specifically traversed. Should the Examiner believe that any outstanding issues are resolvable in an Examiner's Amendment, the Examiner is invited to contact the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 6-30-08

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